



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,321	01/10/2002	Christopher M. Morrissey	AU920010913US1	1241

7590 09/06/2005

Frank C. Nicholas
CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, IL 60201

EXAMINER

KANG, INSUN

ART UNIT	PAPER NUMBER
----------	--------------

2193

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/045,321

Applicant(s)

MORRISSEY ET AL.

Examiner

Insun Kang

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed 6/14/2005.
2. Claims 1-21 are pending in the application.

Drawings

3. The objection to the drawings has been withdrawn because Applicant's argument is persuasive.

Specification

4. The objection to the specification has been withdrawn due to the amendment to the Specification.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4, 5, 7, 12,-14, 15,18- 20, and 21, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Per claim 4, it is unclear whether receiving step is performed after the determining step in claim 1. It is interpreted as the receiving step is performed before the determining step. The test system description refers to the description in claim 1?

Per claims 12 and 18, they are rejected for the same reasons set forth in connection with the rejection of claim 4.

Claim 5 does not further limit the subject matter of previous claims. Are there two comparing steps in claim 5? Per claims 13 and 19, they are rejected for the same reasons set forth in connection with the rejection of claim 5.

As per claims 7, 14, 15, 20, and 21, these claims are rejected for dependency on the above rejected parent claims.

Note: The applicant stated that the claims set out the invention "with a reasonable degree of precision" but has not provided clarification and/or correction regarding the rejection above.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Laviolette et al. (US Patent 6,779,134) hereinafter referred to as "Laviolette."

Per claim 1:

Laviolette discloses:

-selecting a test system in a distributed network environment (i.e. "selected target software to be tested by a selected one of the plurality of test stations," col. 3 lines 13-24; "A software test system and method detects a hardware configuration of each of plurality of test stations that are coupled to a processor such as a test center server," abstract)

-determining, at a management server, a target test system description, the target test system description associated with a software test (i.e. "The test system main server 108 then stores the hardware configuration data provided by the test station agent software as part of the system profile information 132," col. 6 lines 53-64; "the hardware configuration data for use in determining which of the plurality of test stations is a suitable test station for testing target software to be tested," col. 3 lines 1-12)

-comparing, at the management server, the target test system description to a test system descriptions list (i.e. "The test system main server 108 then stores the hardware configuration data provided by the test station agent software as part of the system profile information 132. The hardware configuration data represents the detected hardware configuration of each of the plurality of test stations...a memory map file containing the hardware status of each test station under its control," col. 6 lines 53-64; "the selected test station defined by the test job bundle with...a different operating system, different target software to be tested, and different test software for testing the software under test," col. 3 lines 30-34)

-selecting a test system description from the test system descriptions list that matches the target test system description; and contacting a selected test system, the selected

Art Unit: 2193

test system associated with the selected test system description (i.e. "selectability of test station configuration data such as selectable data ... different target software to be tested on at least one of the plurality of test stations and differing test software capable of testing the selected target software to be tested," col. 3 lines 13-25) as claimed.

Per claim 2:

The rejection of claim 1 is incorporated, and further, Laviolette teaches:

- receiving, at the management server, the software test associated with the target test system description (i.e. col. 6 lines 50-54) as claimed.

Per claim 3:

The rejection of claim 2 is incorporated, and further, Laviolette teaches:

- forwarding, from the management server, the software test, to the selected test system; and executing the software test at the selected test system (i.e. col. 6 lines 63-67) as claimed.

Per claim 4:

The rejection of claim 1 is incorporated, and further, Laviolette teaches:

- receiving at the management server, a test system description, the test system description associated with a functioning system in the distributed network environment (i.e. col. 6 lines 50-56) as claimed.

Per claim 5:

The rejection of claim 4 is incorporated, and further, Laviolette teaches:

- comparing the test system description to the test system descriptions list (i.e. col. 6 lines 50-56, 60-63) as claimed.

Per claim 6:

The rejection of claim 4 is incorporated, and further, Laviolette teaches:

- adding the test system description to the test system descriptions list (i.e. col. 6 lines 48-56) as claimed.

Per claim 7:

The rejection of claim 4 is incorporated, and further, Laviolette teaches:

- communicating with the functioning system at a management agent; determining at least one characteristic of the functioning system at the management agent; and creating the test system description based on the at least one characteristic (i.e. col. 6 lines 38-42) as claimed.

Per claim 8:

The rejection of claim 1 is incorporated, and further, Laviolette teaches:

- descriptions of fully functioning test systems, descriptions of heterogeneous test systems, descriptions of test systems used to balance a network workload, descriptions of test systems used during specific usage periods, and descriptions of test systems compatible with a particular test (i.e. col. 3 lines 35-44; col. 7 lines 46-58) as claimed.

Per claims 9-15, they are the product versions of claims 1-7, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-7 above..

Per claims 16-21, they are the system versions of claims 1-7, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-7 above.

Response to Arguments

9. Applicant's arguments filed 6/14/2005 have been fully considered but they are not persuasive.

Per claims 1, 9, and 16:

The Applicant states that Laviolette does not disclose or suggest, "contacting a selected test system, the selected test system associated with the selected test system description."

In response, the Applicant fails to discuss the references applied against the claims, specifically explaining how the claims avoid the references or distinguish from them and to point out disagreements with the examiner's contentions. Further, Laviolette discloses the software test system that provides selectability of test station and the selected target software to be tested by the selected one of the plurality of test stations ("All preselected tests are executed on a selected test station under control of...the test center server...A user is capable of selecting...a test station," col. 3 lines 45-60; col. 3 lines 13-25). The test stations are coupled to a test center server (col. 3 lines 1-12) and there is a communication link between the stations and the server (col. 4 lines 28-45). Therefore, it is clear that the server communicates (contact) with the selected station to test the selected software and "maintains...user profiles...a system

Art Unit: 2193

profile,...a copy of test station agent software...and test results...obtained after testing is complete (col. 4 lines 45-56)” and “stores the hardware configuration data provided by the test station agent software as part of the system profile information (col. 6 lines 53-65).” If applicant means anything more, this must be brought out in the claims to further clarify the invention.

Per claims 4 and 7:

The Applicant states that Laviolette does not disclose that the test system description is associated with a functioning system” and “anything relating to functioning systems.”

Rather, Laviolette only discloses, “monitoring a host system for software and hardware configuration information and reporting back to the test center sever (remark, page 12).”

The claims do not recite what the functioning system is and how it is different from any system that can produce some functionality such as monitoring, reporting, testing, etc disclosed in Laviolette. If applicant means anything more, this must be brought out in the claims to further clarify the invention.

Per claims 2-8,10-15, and 17-21:

The applicant states that claims 2-8,10-15, and 17-21are allowable as being dependent on the allowable base claims. As has been shown above, the rejections of the independent claims by Laviolette are maintained, the argument that claims 2-8,10-15, and 17-21 are allowable as being dependent on the allowable base claims is considered moot. Accordingly, the rejections of claims 2-8,10-15, and 17-21 are maintained.

Conclusion

10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Insun Kang whose telephone number is 571-272-3724. The examiner can normally be reached on M-F 7:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 571-272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2193

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

I. Kang
Examiner
8/26/2005


ANIL KHATRI
PRIMARY EXAMINER